

(2012) 10 AHC CK 0251
In the Allahabad High Court
Case No : Writ C. No. 47432 of 2006

Nanhey Singh alias Satyendra Bahadur Singh	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Citation : (2013) 3 EFLT 83

Hon'ble Judges : Ashok Bhushan, J; Abhinava Upadhyay, J

Bench : Division Bench

Advocate : S. Shekhar and V.K. Singh, for the Appellant; Sarita Singh and Uma Kant, for the Respondent

Final Decision : Disposed Of

Judgement

Ashok Bhushan and Abhinava Upadhyay, JJ.—Heard Sri V.K. Singh, Advocate for the petitioner and learned Standing Counsel for the State. Counter and rejoinder affidavits have been exchanged.

2. With the consent of learned Counsel for the parties the writ petition is being finally disposed of.

3. By this writ petition, the petitioner has prayed for quashing the order dated 21.7.2006 Annexure 1 to the writ petition passed by the District Magistrate by which the petitioner's representation against the recovery for amount of Rs. 10,81,583/- has been rejected.

4. Petitioner's case in the writ petition is that against him a complaint was made by the private person out of their personal ill will that petitioner has indulged in illegal mining, on which complaint reports submitted were not based on relevant material and a direction was issued for recovery of huge amount. Petitioner had earlier come to this Court against the recovery which writ petition was disposed of by order dated 26.5.2006 giving liberty to the petitioner to represent the matter to the District Magistrate who was directed to consider the same and till the disposal of the representation recovery was kept in abeyance against the

petitioner. Petitioner's case is that although the District Magistrate has passed the order rejecting the representation by order dated 21.7.2006 but no reason as to on what basis the illegal mining against the petitioner has been proved were given.

5. Learned Counsel for the petitioner submits that the report against the petitioner which is basis of order dated 31.8.2004 brought on record alongwith counter affidavit also does not give any reasons or material to come to the conclusion that petitioner has indulged in illegal mining.

6. The basis of report dated 31.8.2004 was inspection made on 27.8.2004 but what was the material for coming to the conclusion that the petitioner had indulged in illegal mining was not mentioned not has even been referred to in the counter affidavit. Learned Counsel submits that subsequent to the filing of the writ petition certain further reports have come on record, which have been brought on record which are also relevant to be considered before taking a final decision.

7. A perusal of the order impugned passed by the District Magistrate indicate that no reasons have been given by the District Magistrate for forming an opinion for recovery against the petitioner on the ground of illegal mining. Only observation made in the order is that the allegation against the petitioner of illegal mining is correct. Neither basis of such conclusion has been indicated in the order nor the order contains any reasons, the order of the District Magistrate only records its conclusions without referring to any reason for coming to said conclusion. More so, on the record of the writ petition several subsequent reports have been brought on record. We are of the view that the ends of justice be served in remitting the matter to the District Magistrate for fresh consideration. We make it clear the we are not expressing any concluded opinion on the merits of the case and it is for the District Magistrate to consider all the material afresh and take a decision in accordance with law.

8. In result the order dated 21.7.2006 is set aside the matter is remitted to the District Magistrate to reconsider the allegations against the petitioner after considering the reports submitted by the authorities and thereafter come to the conclusion regarding liability of the petitioner if any. The District Magistrate shall complete the process. With a period of three months from the date copy of this order is produced before him. The writ petition is disposed of accordingly.